U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF Z-S-

DATE: MAY 16, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a research and development engineer in the field of physics, seeks classification as a member of the professions holding an advanced degree. *See* §203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is normally attached to this EB-2 immigrant classification. *See* § 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director, Texas Service Center, denied the petition. We withdrew the Director's decision and remanded the petition for further consideration and action. The Director again denied the petition and certified the decision to us for review. We affirmed the denial of the petition on certification and in decisions on two subsequent motion filings by the Petitioner.

The matter is now again before us on a motion to reopen and reconsider. On motion, the Petitioner submits additional evidence and argues that the record demonstrates his eligibility for the benefit sought.

Upon *de novo* review, we will grant the motion to reopen and sustain the appeal.

I. LAW

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3).

To establish eligibility for a national interest waiver, a petitioner must first demonstrate his or her qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences arts or business. Because this classification normally requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest. *See* section 203(b)(2) of the Act, 8 U.S.C. section 1153(b)(2).

Neither the Act nor the pertinent regulations define the term "national interest." However, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that he or she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

II. ANALYSIS

In our previous decisions affirming the denial of the Form I-140, Immigrant Petition for Alien Worker, we found that the Petitioner demonstrated his eligibility as an advanced degree professional, but did not establish that a waiver of the job offer requirement is in the national interest. Specifically, we found that he had not satisfied the third prong of the *NYSDOT* national interest waiver analysis. We acknowledged the Petitioner had established that his doctoral research in materials science had a degree of influence on the field as a whole. However, we found that he had not shown a sufficient nexus between that influential research and his post-graduate work to justify projections of future benefit to the national interest.

On motion, the Petitioner submits additional information and evidence regarding his current and proposed research. He provides a letter from his current employer detailing his ongoing research into developing new and improved methods of processing silicon wafers for use in integrated circuit chips. The letter explains with specificity how his findings have been used by his employer and the semi-conductor companies that it serves. Further evidence includes a statement in which the Petitioner sets forth his plans for future research in his field, and a letter attesting to the feasibility of the Petitioner's plans from his former doctoral advisor. The Petitioner argues that the record demonstrates his eligibility for a national interest waiver, and that our previous decisions were contrary to agency policy and the plain language of the *NYSDOT* decision.

The record as a whole, including the evidence submitted on motion, demonstrates the Petitioner's eligibility for the benefit sought. The Petitioner established that he has had a degree of influence on the field in which he will continue to conduct research. We find this showing sufficient to satisfy the criteria set forth in the third prong of *NYSDOT*. We will therefore grant the motion to reopen and sustain the appeal. Accordingly, the Petitioner's motion to reconsider is moot and need not be addressed in this decision.

III. CONCLUSION

The burden is on the Petitioner to show eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The Petitioner in this case has established by a preponderance of the evidence that he qualifies as an advanced degree

professional, and that a waiver of the job offer requirement will be in the national interest of the United States. Accordingly, the motion to reopen will be granted and the appeal will be sustained.

ORDER: The motion to reopen is granted and the appeal is sustained.

Cite as *Matter of Z-S-*, ID# 17035 (AAO May 16, 2016)